

## NEW APPLICATION

## BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

ROBERT "BOB" BURNS - Chairman  
BOYD DUNN  
SANDRA D. KENNEDY  
JUSTIN OLSON  
LEA MÁRQUEZ PETERSON

In the matter of:

BEAR FRUIT FILMS, LLC, aka Bearfruit  
Films, a Nevada limited liability company,

JAMES SIMMONS and CASEY  
SIMMONS, husband and wife, and

MARK SMITH, a married man,

Respondents.

DOCKET NO. S-21100A-20-0066

**NOTICE OF OPPORTUNITY FOR HEARING  
REGARDING PROPOSED ORDER FOR  
RESTITUTION ORDER FOR  
ADMINISTRATIVE PENALTIES AND  
ORDER FOR OTHER AFFIRMATIVE  
ACTION**

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Bear Fruit Films, LLC, aka "Bearfruit Films," James Simmons, and Mark Smith have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that James Simmons is a person controlling Bear Fruit Films, LLC, within the meaning of A.R.S. § 44-1999(B), so that they are jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as Bear Fruit Films, LLC, for its violations of the antifraud provisions of the Securities Act.

**I.****JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

**II.****RESPONDENTS**

2. Respondent Bear Fruit Films, LLC (“BFF”) is (or was) a Nevada limited liability company founded in part by James Simmons (“Simmons”) on or about April 3, 2012, and operated solely by Simmons from approximately May of 2015 through June of 2018.

3. At all times relevant, approximately March 12, 2016, through at least March 29, 2018, BFF conducted business from an address located in Arizona, and operated its business using bank accounts established in Arizona. BFF has not been registered by the Commission as a securities salesman or dealer.

4. On or about April 30, 2015, the Nevada Secretary of State revoked BFF’s entity status, but Simmons continued to conduct business under BFF’s name from a location in Arizona until at least June of 2018.

5. At all times relevant, approximately March 12, 2016, through at least March 29, 2018, Simmons was a resident of Arizona and the sole managing member of BFF. Simmons has not been registered by the Commission as a securities salesman or dealer.

6. At all times relevant, Respondent Mark Smith (“Smith”) was a resident of Granger, Indiana. Smith has not been registered by the Commission as a securities salesman or dealer.

7. Simmons, BFF, and Smith may be referred to collectively as “Respondents.”

8. Respondent Casey Simmons was at all relevant times the spouse of Respondent Simmons. Respondent Casey Simmons may be referred to as “Respondent Spouse.” Respondent Spouse is joined in this action pursuant to A.R.S. §44-2031(C).

9. At all times relevant, Respondent Simmons and Respondent Spouse were acting for their own benefit and on behalf of and for the benefit of their marital community.

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**III.****OVERVIEW**

10. At all relevant times, BFF was a film and television production company, specializing in low-budget, independent productions of family-oriented content.

11. From at least March 12, 2016, through at least March 29, 2018, Respondents offered and sold securities in the form of certificates of interest in profit sharing agreements, investment contracts, and/or notes to investors in Arizona and other states in order to fund several film and television projects.

12. Respondents' offered and sold profit-share agreements ("Profit-Share Agreements") whereby investors would provide BFF with investment capital to produce specific film and television projects, and, in return, BFF agreed to pay investors 125% of their investment amount from the gross profits of the film/television project and to pay investors a percentage of the net profits of the applicable film/television project ("royalty units").

13. Although the Profit-Share Agreements refer to the investors alternatively as "investors" and "lenders," all of the Profit-Share Agreements offered essentially the same opportunity to fund a film/television production with an anticipated a return derived from the gross and net profits of a film/television project.

14. Whether described as "investors," "profit share beneficiaries," or "lenders," the investors had no direct control over the film and television productions and relied on Respondents to use the investment capital to produce and distribute profitable films and television content.

15. Respondent Smith, operating under his own name and the names "AIM, LLC," and "Chazown, LLC," acted as an agent of BFF.

16. At all relevant times, Smith promoted the securities offered by BFF and Simmons and sold the Profit-Share Agreements to investors in exchange for a share of the investment capital and net profits of the applicable film and television project.



1           22. Pursuant to the LT/ISC Profit-Share Agreements, investors provided BFF money for  
2 the production and distribution of LT/ISC, and BFF would pay investors 125% of their principal  
3 investment from the gross revenues of LT/ISC and pay investors a percentage of the net profits of  
4 LT/ISC for the life of the film.

5           23. Respondents typically sold the LT/ISC Profit-Share Agreements for \$20,000 per  
6 percentage point of the net profits.

7           24. From at least June 13, 2016, through at least August 5, 2017, Respondents BFF and  
8 Simmons sold at least forty (40) LT/ISC Profit-Share Agreements to at least thirty-four (34) investors  
9 and collected at least \$807,500 in investment capital.

10          25. Prior to offering the LT/ISC Profit-Share Agreements, Respondents entered into a  
11 production agreement whereby Respondent Smith was authorized to offer Profit-Share Agreements  
12 on behalf of BFF and would receive a percentage of each investment made.

13          26. BFF and Simmons granted Smith broad discretion to promote and sell the LT/ISC  
14 Profit-Share Agreements and to modify the terms of the Profit-Share Agreements to include partial  
15 guarantees.

16          27. Pursuant to the production agreement, Respondent Smith, acting on behalf of  
17 Respondents BFF and Simmons, sold at least thirty-four (34) LT/ISC Profit-Share Agreements to at  
18 least twenty-eight (28) investors for a total of at least \$657,500, and offered LT/ISC Profit-Share  
19 Agreements to dozens more potential investors.

20          28. Prior to offering the LT/ISC Profit-Share Agreements, Respondents created a business  
21 plan ("LT/ISC Business Plan") to distribute to potential investors.

22          29. Respondents distributed the LT/ISC Business Plan to all actual and potential  
23 investors, and the LT/ISC Profit-Share Agreements specify that they shall be "enforceable in  
24 accordance with the terms listed in the business plan."

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1           30. Respondents made some modifications to the LT/ISC Business Plan over the course  
2 of the next year, but the different version of the LT/ISC Business Plan offered the same investment  
3 opportunity and contained the same or similar misrepresentations.

4           31. All versions of the LT/ISC Business Plan distributed to actual and potential investors  
5 between December of 2015 and August of 2017, represented that “[t]he film is based on a  
6 **#1 Amazon-Kindle book (October 2015)**” (emphasis original).

7           32. Respondents failed to disclose that:

- 8           a) *The Loyalty Treasures* was not the bestselling Amazon-Kindle book in the  
9 month of October 2015;
- 10           b) *The Loyalty Treasures* was not the most downloaded Amazon-Kindle book in  
11 the month of October 2015, and was only the most downloaded *free* Amazon-  
12 Kindle book during a single day in October 2015;
- 13           c) only fourteen (14) copies of *The Loyalty Treasures* were sold in October 2015  
14 and only thirty-five (35) copies were sold between September 2015 and June  
15 2016.

16           33. The failure to disclose this information in conjunction with the claim that LT/ISC is  
17 “based on a #1 Amazon-Kindle book (October 2015)” gave the false impression that the film to be  
18 produced by Respondents was based on the bestselling and/or most downloaded Kindle book for the  
19 month of October 2015 – a commercially successful book with a proven history of broad and lasting  
20 appeal.

21           34. All versions of the LT/ISC Business Plan distributed to actual and potential  
22 investors between December of 2015 and August of 2017, represented that “[w]e are presently in  
23 **discussion with Provident and Pureflix to distribute “The Loyalty Treasures”** (emphasis  
24 original).

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1           35. In fact, at the time Respondents distributed the LT/ISC Business Plan to potential  
2 investors and sold the LT/ISC Profit-Share Agreements, Respondents had not discussed the  
3 distribution of LT/ISC with the major film distributors Provident or Pureflix.

4           36. All versions of the LT/ISC Business Plan contained unrealistic and unsubstantiated  
5 claims of how profitable the investment would be, including:

- 6           a) Investment Scenarios that showed a return ranging from 275%-625%;
- 7           b) the statement "We firmly believe with a reasonable budget we will produce a  
8 film that will make a generous profit for all involved; and
- 9           c) comparisons with other exceptionally successful low-budget films that had  
10 grossed tens of millions of dollars.

11           37. Respondents chose not to use BFFs prior films as examples in the LT/ISC Business  
12 Plan because none of them were profitable.

13           38. Respondents did not disclose to investors that none of BFF's previous films had  
14 earned any profits or that none of the investors in previous BFF film projects had made any profits  
15 on their investment.

16           39. In fact, Respondent Simmons still owed a substantial judgment debt related to his  
17 previous, unsuccessful film projects.

18           40. On or about January 15, 2016, Arizona Grand Resorts, LLC, recorded a judgment  
19 against James Simmons for \$42,240 in connection with his failure to pay a promissory note related  
20 to a previous BFF film production titled "Griddle House."

21           41. Respondents did not disclose the existence or amount of the Arizona Grand Resort  
22 judgment to potential investors.

23           42. Respondents did not disclose any specific risks associated with the investment, and  
24 the only risk disclosure was the boilerplate, fine print statement "there is no guarantee of a profitable  
25 film, discuss with producer(s) risk factors.  
26

1       43.     When investors attempted to discuss the risk of loss with the Respondents, they were  
2 informed that there was no risk or very little risk that they would lose the money they invested.

3       44.     At least thirty-three (33) of the LT/ISC Profit-Share Agreements, including at least  
4 thirty-one (31) sold by Respondent Smith, included a partial buy-back guarantee that required BFF  
5 to repurchase investor royalty units under certain circumstances. The written guarantees specified:

6           a)     “In the event that the investor does not begin to receive disbursement from the  
7 film revenues within 12 months of the completion of production, Bearfruit  
8 Films LLC will offer to buy back each unit with a minimum purchase of  
9 \$10,000;”

10          b)     “At 12 months past the completion of production, if the investor is not satisfied  
11 with the disbursements from the film, at the sole discretion of the investor,  
12 Bearfruit Films LLC will offer to buy back each unit with a minimum purchase  
13 of \$10,000, or any half-units purchased with a minimum purchase of \$5,000,  
14 less any disbursements to date;” or

15          c)     “In the event that the investor does not begin to receive payments from the  
16 movie revenues within 12 months of the completion of production, Bearfruit  
17 Films LLC will guarantee 50% return of investment from the revenues of their  
18 three previous films.”

19       45.     Respondents used this buy-back guarantee to attract more investors to purchase the  
20 LT/ISC Profit-Share Agreements, and notified some potential investors that the money used to secure  
21 this guarantee would come from the profits of BFF’s previous films, including a purported \$1.4  
22 million foreign distribution deal for BFF’s previous film *Griddle House*.

23       46.     Respondents did not disclose that none of BFF’s previous films had earned any profits,  
24 and Respondents never kept a separate pool of funds to fulfill the guarantees.

25     ....

26     ....

1       47.     The failure to disclose that Respondent BFF lacked the funds to fulfill the partial  
2     guarantee of the royalty units or a successful project from which those funds could be acquired, gave  
3     the false impression that the buy-back guarantee reduced or eliminated the risk of loss.

4       48.     Despite having never produced a profitable film, Respondents routinely  
5     misrepresented BFF's history of successful film production.

6       49.     Respondents misrepresented to at least nineteen (19) potential investors that *Griddle*  
7     *House* was a profitable production, and "was a success at the Cannes Film Festival, garnering \$1.4  
8     million to date on international distribution rights."

9       50.     In fact, Respondents had not received any money from the licensing or sale of  
10    distribution rights to *Griddle House*.

11      51.     Respondents had only a tentative partnership offer from a sales agent who would  
12    solicit foreign distributors for the film *Griddle House*. Simmons and BFF became skeptical of the  
13    potential partnership with the sales agent around September or October of 2016, and the partnership  
14    ultimately fell through.

15      52.     When interacting with actual and potential investors in LT/ISC, Respondents routinely  
16    misrepresented the number of royalty units that had already been sold, and very few if any investors  
17    were provided with an itemized budget for the film.

18      53.     In various forms of the LT/ISC Business Plan, Respondents represented that:

19           a)     "20 units of the film remain available for investment at \$20,000 per unit [...]"

20                   \*\*\*Note: 20 of original 40 units have been claimed as of Nov 20, 2015;" or

21           b)     "5 units of the film remain available for investment at \$20,000 per unit [...]"

22                   \*\*\*Note: 35 of original 40 units have been claimed as of June 25, 2016."

23      54.     Respondents supplemented these statements in the LT/ISC by misrepresenting to  
24    potential investors that the majority of units had already been purchased or claimed, and other  
25    investors associated with BFF had already purchased or agreed to purchase twenty (20) royalty units.  
26

1        55. Respondents routinely misrepresented the funding situation when interacting with  
2 actual and potential investors, including false statements about both the number of royalty units  
3 already sold, and the number of units still available for sale.

4        56. In reality, Respondents had only sold two royalty units prior to July 1, 2016, and had  
5 only secured \$40,000 to produce LT/ISC.

6        57. The twenty (20) units purportedly “claimed” since November of 2015, were actually  
7 matching funds that Respondents Simmons and BFF thought they could find later.

8        58. Respondents’ representations regarding the number of royalty units already claimed,  
9 earmarked, or purchased, gave the false impression that many other investors had already purchased  
10 royalty units and that the film was almost fully funded.

11        59. In or about October of 2016, Respondents used investor money to produce LT/ISC.  
12 Respondents BFF and Smith received a combined total of approximately \$148,000 for their work as  
13 producers on the film.

14        60. To date, none of the investors who purchased the LT/ISC Profit-Share Agreements  
15 has received any return on his or her investment.

16                                    **Sale of *A Life Connected* Profit-Share Agreements**

17        61. From at least March 12, 2016, through at least March 29, 2018, Respondents funded  
18 the production of a low-budget independent film with the working titles *A Life Connected* (“ALC”)  
19 through the sale of Profit-Share Agreements.

20        62. ALC was based on a stage play commissioned by Christian Family Care Agency  
21 (“CFCA”), an Arizona based foster care organization.

22        63. On February 15, 2016, Respondents Simmons and BFF, entered a licensing agreement  
23 with CFCA (the “CFCA Agreement”) in which Simmons and BFF agreed to produce a film based  
24 on the ALC stage play in exchange for a twenty-five percent (25%) share of the net profits of the  
25 film.  
26

1           64. Pursuant to the CFCA Agreement, CFCA granted Respondents BFF and Simmons a  
2 limited license to create a film based on ALC and to distribute that film within the United States.  
3 Respondents BFF and Simmons in turn agreed that CFCA would own all rights, title, and interest,  
4 including the copyright, to the film produced.

5           65. Pursuant to the CFCA Agreement, Respondents Simmons and BFF were authorized  
6 to sell up to twenty-five percent (25%) of the net profits of ALC to investors to fund the production  
7 of the film, and CFCA would be entitled to no less than thirty percent (30%) of the net profits of the  
8 film.

9           66. From at least March 12, 2016, through at least March 29, 2018, Respondents BFF and  
10 Simmons sold at least thirty-one (31) ALC Profit-Share Agreements to at least twenty-eight (28)  
11 investors for a total of at least \$685,000 in investor capital.

12           67. As with LT/ISC, Respondent Smith agreed to seek investors to fund the production  
13 of ALC and to act as a producer of the film in exchange for a percentage of the investment capital he  
14 acquired from investors and a share of the net profits of the film.

15           68. Smith, acting on behalf of Respondents BFF and Simmons, sold at least sixteen (16)  
16 ALC Profit-Share Agreements to at least fourteen (14) investors for a total of least \$370,000 in  
17 investment capital.

18           69. Pursuant to the ALC Profit-Share Agreements, investors would provide money for the  
19 production and distribution of ALC, and BFF would pay investors 125% of their principal investment  
20 from the gross profits of ALC and a percentage of the net profits of the film.

21           70. Respondents typically sold the ALC Profit-Share Agreements for \$15,000 per royalty  
22 unit, with each royalty unit purchased entitling the investors to \$18,750 from the gross revenues of  
23 ALC and a one percent (1%) share of the net profits of the film.

24           71. From approximately March of 2016 through March of 2018, Respondents distributed  
25 a business plan ("ALC Business Plan") to potential investors in ALC.  
26

1           72. Respondents distributed the ALC Business Plan to all actual and potential investors,  
2 and the ALC Profit-Share Agreements specify that they shall be “enforceable in accordance with the  
3 terms listed in the business plan.”

4           73. Respondents modified the ALC Business Plan over the course of the two-year period  
5 in which it was distributed, but the different version of the ALC Business Plan offered the same  
6 investment opportunity and contained many of the same misrepresentations.

7           74. The ALC Business Plan distributed to actual and potential investors during the  
8 relevant time period, represented that “30% of the film’s profits will be donated to Christian Family  
9 Care Agency, a 501c3 non-profit social service agency committed to the betterment of children and  
10 families in Arizona.”

11           75. In fact, the thirty percent (30%) of the net profits to be paid to CFCA was not a  
12 charitable donation, but rather a contractually obligated payment owed to CFCA in exchange for the  
13 license to produce and distribute copyrighted material that they owned.

14           76. The obligation to pay at least thirty percent (30%) of the net profits of ALC to CFCA  
15 materially limited Respondents’ ability to fund the production and distribution of ALC, and  
16 misrepresenting CFCA’s interest in the net profits as a “donation” gave the false impression that the  
17 payment was voluntary and revocable.

18           77. Respondents failed to disclose to investors the existence and nature of the CFCA  
19 Agreement, an agreement that Respondents BFF and Simmons admit was a “bad deal,” and failed to  
20 disclose provisions of the CFCA Agreement that materially affected the value of the investments.

21           78. Respondents did not disclose that BFF and Simmons could not sell ALC to a third-  
22 party for the benefit of the investors because CFCA owned the copyright to film.

23           79. Respondents failed to disclose that the license granted by CFCA did not include the  
24 foreign distribution rights to the ALC, which would limit the profitability of the film.

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1           80. Respondents failed to disclose that CFCA would have significant control over the film  
2 and its content, including final approval of the script, the budget and the assignment of any  
3 distribution rights.

4           81. All versions of the ALC Business Plan contained unsubstantiated claims of how  
5 profitable the investment would be, including:

- 6           a) Investment Scenarios that showed a return ranging from 275%-625%;
- 7           b) the statement "We firmly believe with a reasonable budget we will produce a  
8 film that will make a generous profit for all involved; and
- 9           c) comparisons with other exceptionally successful, low-budget, "faith based"  
10 films that had grossed tens of millions of dollars.

11           82. Respondents failed to disclose to investors that none of the films produced by  
12 Respondents Simmons and BFF had earned any profits for any of the investors in those projects, and  
13 any projected profits were not based on Respondents' past performance.

14           83. In fact, Respondent Simmons still owed a judgment debt of at least \$42,240 to the  
15 Arizona Grand Resorts, LLC, related to his previous, unsuccessful film project *Griddle House*, but  
16 Respondents did not disclose the judgment to potential investors.

17           84. At least eight (8) of the ALC Profit-Share Agreements sold by Respondents to at least  
18 seven (7) investors included a partial buy-back guarantee that required BFF to repurchase investor  
19 royalty units under certain circumstances. The written guarantees specified:

- 20           a) "At 12 months past the date of the completion of production, if the lender is not  
21 satisfied with the disbursements from the film, at the sole discretion of the lender,  
22 Bearfruit Films LLC will offer to buy back each unit with a minimum purchase of  
23 50% of amount loaned, less any disbursements to date;" or
- 24           b) "At 12 months past the date of the completion of production, if the lender is not  
25 satisfied with the disbursements from the film, at the sole discretion of the lender,  
26

1 Bearfruit Films LLC will offer to buy back each unit with a minimum purchase of  
2 \$7,500, less any disbursements to date.”

3 85. Respondents used this buy-back guarantee to attract more investors to purchase the  
4 ALC Profit-Share Agreements.

5 86. Respondents did not tell the investors that BFF had never earned any profits from its  
6 previous films and had no funds to fulfill this guarantee.

7 87. The failure to disclose that Respondent BFF lacked the funds to fulfill the partial  
8 guarantee of the royalty units or a successful project from which those funds could be acquired, gave  
9 the false impression that the buy-back guarantee reduced or eliminated the risk of loss.

10 88. Versions of the ALC Business Plan distributed to at least twenty-eight (28) investors  
11 from approximately April of 2017 through March of 2018, including at least fifteen (15) who were  
12 sold investments by Respondent Smith, contained a section titled “**Who is involved and what are**  
13 **they saying**”(emphasis original).

14 89. This section included positive statements about ALC purportedly made by notable  
15 film and television producers, including:

- 16 a) “‘This type of film will find a large and long lasting audience base.’ – Chaz  
17 Gray (Emmy nominated producer);”  
18 b) “‘This is a powerful and uplifting story that needs to be told.’ – Simon Swart,  
19 VP of programming at Fox;” and  
20 c) “*This film is a winner.*” – Brian Keathley, Producer

21 90. Respondents failed to disclose that none of the noteworthy producers purportedly  
22 quoted in this section of the ALC Business Plan were actually involved in the production of ALC,  
23 and their so-called “involvement” was limited to, at most, preliminary feedback on the film concept.

24 91. In or about October of 2017, Respondents used investor money to produce ALC.  
25 Respondents BFF and Smith each received approximately \$60,000 for their work as producers on  
26 the film.

1           92. To date, none of the investors who purchased the ALC Profit-Share Agreements has  
2 received any return on his or her investment. Due in part to the undisclosed agreement with CFCA,  
3 ALC has never been licensed to a film distributor.

4                           **Sale of *Pioneer Family/Saddle Up* Profit-Share Agreements**

5           93. From at least October 14, 2016, through at least June 4, 2017, Respondents sought  
6 investor funding for the production of a television series with the working titles *Pioneer Family* and  
7 *Saddle Up!* (“PF/SU”) through the sale of Profit-Share Agreements.

8           94. Pursuant to the PF/SU Profit Sharing Agreements, investors would provide “venture  
9 capital” to “develop, produce, and commercialize” PF/SU, and BFF would pay investors 125% of  
10 their principal investment from the gross profits of PF/SU and a percentage of the net profits of the  
11 television series.

12           95. Respondents Simmons and BFF would purportedly use investor funds to create a  
13 television series pilot or “sizzle reel” featuring clips from the television series, and then seek  
14 additional funding from a television network to produce the television series.

15           96. Respondents typically sold the PF/SU Profit-Share Agreements for \$5,000 or \$10,000  
16 per royalty unit, with each royalty unit purchased entitling the investors to \$6,250 or \$12,500 from  
17 the gross revenues of PF/SU and a one percent (1%) share of the net profits of the film.

18           97. From at least October 14, 2016, through at least June 4, 2017, Respondents sold at  
19 least ten (10) PF/SU Profit-Share Agreements to at least ten (10) investors for a total of at least  
20 \$115,000 in investor capital.

21           98. As with LT/ISC and ALC, Respondent Smith agreed to sell the PF/SU Profit-Share  
22 Agreements and to act as a producer of the television show in exchange for a percentage of the  
23 investment capital he acquired from investors.

24           99. Respondent Smith, acting on behalf of Respondents BFF and Simmons, sold at least  
25 eight (8) of the PF/SU Profit-Share Agreements to at least eight (8) investors for a total of at least  
26 \$100,000 in investment capital.

1           100. From at least October of 2016 to June of 2017, Respondents distributed a business  
2 plan (“PF/SU Business Plan”) describing the PF/SU investment to potential investors.

3           101. Respondents distributed the PF/SU Business Plan to all actual and potential investors,  
4 and the PF/SU Profit-Share Agreements specify that they shall be “enforceable in accordance with  
5 the terms listed in the business plan.”

6           102. The PF/SU Business Plan distributed to investors contained unsubstantiated claims  
7 regarding the profitability of the investment, including, but not limited to:

8               a)     *“We firmly believe we will produce a show that will make a profit” or “This*  
9                       *is a show that will make a profit [...]”*

10              b)     *“We intend to secure a network contract paying \$100,000 or more per*  
11                       *episode,” or “We intend to secure a network contract paying \$50,000-*  
12                       *\$100,000 or more per episode;”*

13              c)     *“Our goal is to get to season 2 and all involved will see fairly large profits;”*

14              d)     *“We will repay our investors their money back, plus 25% interest on their*  
15                       *money;” and*

16              e)     *“We expect to find a network partner or content provider within 90 to 120 days*  
17                       *of finishing putting together the package.”*

18           103. Respondents failed to disclose to investors that Simmons and BFF had never produced  
19 a profitable film, and none of the films produced by Simmons and BFF had earned any profits for  
20 any of the investors in those projects.

21           104. On the contrary, Respondent Simmons still owed a judgment debt of at least \$42,240  
22 to the Arizona Grand Resorts, LLC, related to his previous, unsuccessful film project *Griddle House*,  
23 but Respondents did not disclose the judgment or the financial status of that film project to potential  
24 investors.

25           105. Respondents did not disclose any specific risks associated with the investment, and  
26 the only risk disclosure was the boilerplate, fine print statement “Some statements in this business

1 plan that are forward-looking statements, do involve risks and uncertainties; actual results may differ  
2 from the forward-looking statements. Speak with a producer regarding such risk factors.”

3 106. The PF/SU Business Plan used to attract investors contained a section titled “**Who is**  
4 **involved and what are they saying.**”

5 107. This section contained positive statements about ALC purportedly made by notable  
6 film and television producers, including:

- 7 a) “‘I can’t wait to see the sizzle reel for this show and get a look at the scripts  
8 for this show concept ... I love it’ – Simon Swart, VP of programming at Fox;”  
9 b) “‘This type of show will find a large and long lasting audience base.’ – Chaz  
10 Gray (Emmy nominated producer);”and  
11 c) “‘*I will find a network who will want 12-18 more episodes right away, this*  
12 *show is a winner.*’ – Brian Keathley, Producer” (emphasis original).

13 108. Respondents failed to disclose that none of producers purportedly quoted in this  
14 section of the PF/SU Business Plan were actually involved in the production of PF/SU, and their so-  
15 called “involvement” was limited to, at most, feedback on the television show concept.

16 109. In or about March of 2017, Respondents used investor money to produce the PF/SU  
17 sizzle reel. Respondent Smith received approximately \$10,000 and Respondents Simmons and BFF  
18 received approximately \$20,000 for producing PF/SU.

19 110. To date, none of the investors who purchased the PF/SU Profit-Share Agreements has  
20 received any return on his or her investment.

21 V.

22 VIOLATION OF A.R.S. § 44-1841

23 (Offer or Sale of Unregistered Securities)

24 111. From at least March 12, 2016, through at least March 29, 2018, Respondents offered  
25 and sold securities within or from Arizona in the form of certificates of interest in profit-sharing  
26

1 agreements, investment contracts, and/or notes with respect to at least eighty-one (81) sales of the  
2 Profit-Share Agreements totaling at least \$1,607,500.

3 112. The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
4 Securities Act.

5 113. This conduct violates A.R.S. § 44-1841.

6 **VI.**

7 **VIOLATION OF A.R.S. § 44-1842**

8 **(Transactions by Unregistered Dealers or Salesmen)**

9 114. From at least March 12, 2016, through at least March 29, 2018, Respondents offered  
10 and sold at least eighty-one (81) securities within or from Arizona in the form of certificates of interest  
11 in profit-sharing agreements, investment contracts, and/or notes by persons who were not registered as  
12 dealers or salesmen pursuant to Article 9 of the Securities Act.

13 115. This conduct violates A.R.S. § 44-1842.

14 **VII.**

15 **VIOLATION OF A.R.S. § 44-1991**

16 **(Fraud in Connection with the Offer or Sale of Securities)**

17 116. From at least March 12, 2016, through at least March 29, 2018, in connection with the  
18 offer or sale of at least eighty (81) Profit-Share Agreements for the films LT/ISC, ALC, and PF/SU  
19 within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice  
20 to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were  
21 necessary in order to make the statements made not misleading in light of the circumstances under which  
22 they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would  
23 operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not  
24 limited to, the following:

25 117. From at least June 13, 2016, through at least August 5, 2017, in connection with the  
26 offer or sale of at least forty (40) Profit-Share Agreements for the film LT/ISC:

- a) Representing that *LT/ISC* was based on a “**#1 Amazon-Kindle book (October 2015)**” (emphasis original) while failing to disclose that *The Loyalty Treasures* Kindle book barely sold any copies and was only the most downloaded *free* Kindle ebook during a single day in October of 2015;
- b) Falsely claiming that BFF was “**presently in discussion with Provident and Pureflix to distribute ‘The Loyalty Treasures’**” (emphasis original) when Respondents had never discussed the distribution of *LT/ISC* with the distribution companies Provident or Pureflix;
- c) Representing that *LT/ISC* would be a profitable and low-risk investment while failing to disclose that none of the previous films produced by BFF and Simmons had been profitable or earned a profit for film investors and failing to disclose risks of investment;
- d) Falsely representing the number of available royalty units of *LT/ISC* for sale and/or falsely representing the number of royalty units that had already been claimed or purchased;
- e) In connection with at least thirty-three (33) sales of securities, agreeing to partially guarantee the *LT/ISC* Profit-Share Agreements while failing to disclose that BFF had no funds to fulfill the guarantee and no profitable film projects from which those funds could be acquired; and
- f) In connection with at least nineteen (19) offers to sell securities, falsely claiming that BFF had received \$1.4 million for the distribution rights to the previous BFF production *Griddle House*.

118. From at least March 12, 2016, through March 29, 2018, in connection with the offer or sale of at least thirty-one (31) Profit-Share Agreements for the film *ALC*:

- a) Falsely representing that the thirty percent (30%) of the net profits to be paid to CFCA was a voluntary donation rather than a contractual obligation;

- b) Failing to disclose that CFCA would own the copyright to film that the investors were paying to produce;
- c) Failing to disclose that CFCA would have substantial control over the film project, including final approval of the script, budget, and any distributors used to distribute ALC;
- d) Representing that ALC would be a profitable and low-risk investment while failing to disclose that none of the previous films produced by BFF and Simmons had been profitable, none of the investors in previous BFF film projects had earned a profit, Simmons still owed a judgment debt of at least \$42,240 related to previous BFF film production, and failing to disclose any risks of the investment;
- e) In connection with at least eight (8) securities sales, agreeing to partially guarantee the LT/ISC Profit-Share Agreements while failing to disclose that BFF had no funds to fulfill the guarantee and no profitable film projects from which those funds could be acquired; and
- f) In connection with at least twenty-eight (28) sales of securities, representing that specific, notable producers were involved in the production of ALC, while failing to disclose that the extent of their involvement, if any, was feedback on the film concept.

119. From at least October 14, 2016, through at least June 4, 2017, in connection with the offer or sale of at least ten (10) Profit-Share Agreements for the television production PF/SU:

- a) Representing that PF/SU would be a profitable and low-risk investment while failing to disclose that none of the previous films produced by BFF and Simmons had been profitable, none of the investors in previous BFF productions had received a profit from their investment, Simmons still owed a judgment debt of at least \$42,240 related to a previous BFF production, and failing to disclose any risks of the investment; and

b) Representing that specific, notable producers were involved in the production of PF/SU, while failing to disclose that the extent of their involvement, if any, was feedback on the script.

120. This conduct violates A.R.S. § 44-1991.

## VIII.

## CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999

121. From at least March 12, 2016, through March 29, 2018, Simmons has been or held himself out as the individual with exclusive control of BFF.

122. From at least March 12, 2016, through March 29, 2018, Simmons directly or indirectly controlled BFF within the meaning of A.R.S. § 44-1999. Therefore, Simmons is jointly and severally liable to the same extent as BFF for its violations of A.R.S. § 44-1991 from at least March 12, 2016, through March 29, 2018.

## IX.

### REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital community of Respondent James Simmons and Respondent Spouse Casey Simmons be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action; and

5. Order any other relief that the Commission deems appropriate.

**XIV.****HEARING OPPORTUNITY**

Each Respondent including Respondent Spouse may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail [cdbuck@azcc.gov](mailto:cdbuck@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

**XV.****ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona

1 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be  
2 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site  
3 at <http://www.azcc.gov/divisions/hearings/docket.asp>.


4 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant  
5 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a  
6 copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007,  
7 addressed to Mitchell Allee, Enforcement Attorney.

8 The Answer shall contain an admission or denial of each allegation in this Notice and the  
9 original signature of the answering respondent or respondent's attorney. A statement of a lack of  
10 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not  
11 denied shall be considered admitted.

12 When the answering Respondent intends in good faith to deny only a part or a qualification  
13 of an allegation, the Respondent shall specify that part or qualification of the allegation and shall  
14 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

15 The officer presiding over the hearing may grant relief from the requirement to file an Answer  
16 for good cause shown.

17 Dated this 1<sup>st</sup> day of April, 2020.

18  
19   
20 Mark Dinell  
21 Director of Securities  
22  
23  
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